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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

PETE SMITH

DOCKET NO. 1:05 cv 0495

SECTION P

VS.

JUDGE DRELL

WARDEN MENIFEE

MAGISTRATE JAMES D. KIRK

CONSOLIDATED WITH

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

PETE SMITH

DOCKET NO. 1:05 CV 0068

SECTION P

VS.

JUDGE DEE D. DRELL

ROBERT TAPIA, WARDEN

MAGISTRATE JUDGE KIRK

MEMORANDUM ORDER

Before the Court is a petition for a writ of *habeas corpus* filed on March 17, 2005, pursuant to 28 U.S.C. § 2241, in forma pauperis by pro se plaintiff, **PETE SMITH**, who is currently confined at the United States Penitentiary in Pollock, Louisiana ("U.S.P. Pollock"). Because the substance of the plaintiff's claims are factually similar to those which were filed on January 10, 2005 in *Smith v. Tapia*, 1:05 cv 0068 , it is appropriate to consolidate this instant complaint with those claims.

In 1:05 cv 0068, filed January 10, 2005 Plaintiff names Robert Tapia as the defendant in his petition. Plaintiff alleges he is eligible for release under a BOP misinterpretation of 18 U.S.C. 3624(b). This is an issue of first impression for the Fifth Circuit, and there is conflicting case law among the district courts in the Fifth Circuit. Service of process was recommended by the magistrate in 05 cv 0068.

In 1:05 cv 0495, filed March 17, 2005, plaintiff names Warden Meniffee, Chris Smith, and Cannon as defendants. He asserts in his \$2241 that he is eligible for release to a halfway house. He also asserts the same claim of eligibility for release under 18 U.S.C. 3624(b).

Because both cases seek the same relief, release, and arise out of the same set of facts, under the same legal theories, the above captioned suit should be consolidated with 1:05 cv 0068.

WHEREAS, the above referenced matters are currently pending before this court;

WHEREAS, this suit arises out of the same incidents and the consolidated suits involve common issues of law and fact;

WHEREAS, the ends of justice will best be served by the consolidation of this case with the consolidated case Smith, 1:05 cv 0068;

Accordingly,

IT IS ORDERED that the Clerk of Court consolidate the above

entitled and numbered case Neal 1:05 cv 0495 , presently pending before this court under docket number 1:05 cv 0068.

Failure to keep the court apprised of an address change may result in dismissal of this action under Uniform Local Rule 41.3 of the Uniform Local Rules of Court for the District Courts in Louisiana.

THUS DONE AND SIGNED in chambers, in Alexandria, Louisiana,
this the 17th day of June 2005.



JAMES D. KIRK
UNITED STATES MAGISTRATE JUDGE